

## § 304.8

## 1 CFR Ch. III (1–12 Edition)

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) The agency determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12,600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the agency will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the agency will promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever the agency provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, it will also notify the requester(s). Whenever the agency notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, it will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the agency will notify the requester(s).

### § 304.8 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with the response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chairman of the agency. You must make your appeal in writing, by e-mail or letter, and it must be received by the agency within 60 days of the date of the agency's response denying your request. Your appeal should provide reasons and supporting information as to why the initial determination was incorrect. The appeal should clearly identify the particular determination (including the assigned request num-

ber, if known) that you are appealing. For the quickest possible handling of a mail request, you should mark your appeal "Freedom of Information Act Appeal." The Chairman or his or her designee will act on the appeal, except that an appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on your appeal will be made by e-mail or letter, ordinarily within 20 business days of receipt of your appeal. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmation, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. (You also may be aware of the mediation services that are offered by the Office of Government Information Services ("OGIS") of the National Archives and Records Administration—see <http://www.archives.gov/ogis/>—as a non-exclusive alternative to FOIA litigation.) If the adverse determination is reversed or modified on appeal, in whole or in part, then you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* As a general rule, if you wish to seek review by a court of any adverse determination, you must first appeal it in a timely fashion under this section.

### § 304.9 Fees.

(a) *In general.* The agency will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section, where a waiver or reduction of fees is granted under paragraph (k) of this section, or where the agency's FOIA staff waives fees in whole or in part because they are deemed to be inappropriate or unreasonable—and in some cases the agency may seek further information or clarification from the requester for this purpose. The agency ordinarily will collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.